UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES NEW YORK BRANCH OFFICE

AMBASSADOR WHEELCHAIR SERVICES, INC.

AND

CASES
34-CA-10176

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE & 34-CA-10283

AGRICULTURAL IMPLEMENT 34-RC-1970

WORKERS OF AMERICA, LOCAL 376

Terri A Craig, Esq., Counsel for the General Counsel Anthony J. Palermino, Esq., Counsel for the Respondent Thomas W. Meiklejohn Esq., Counsel for the Union

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in Hartford, Connecticut on January 13-16 and 21 and 22, 2003.

The Petition in 32-RC-1970 was filed and served on July 23, 2002. Pursuant to a Stipulated Election Agreement approved on August 2, 2002, an election was conducted on August 22, 2002. The tally of ballots showed that the Union received 14 votes, that 18 votes were cast against representation and that 6 ballots were challenged. Challenged ballots were determinative of the outcome of the election. The Union filed objections to the election and the Regional Director issued a Report on Challenged Ballots and Objections on November 22, 2002.

With respect to the challenges, the Union and the Employer agreed that Denise Little was an eligible voter whose ballot should be opened and counted. They also agreed that Anthony Fazzina's ballot should remain uncounted. However, as to the challenges to Diane Delisle, Daniel LaPointe, Wilfredo Maldonado and Louis Flores, the Regional Director directed that those issues be resolved by a hearing. In this regard, the Employer had challenged the ballots of Delisle, LaPointe and Maldonado on the grounds that they no longer were employed at the time of the election, whereas the Union contends that they were illegally discharged in violation of Section 8(a)(3) of the Act. As to Louis Flores, the Union challenged his ballot, contending that he is a supervisor as defined in Section 2(11) of the Act.

With respect the Objections, the Union withdrew its Objections 2 and 9. The remaining Objections essentially track allegations that are contained in the related unfair labor practice complaints and therefore, the Regional Director ordered that a hearing on the Objections be Consolidated with the unfair labor practice proceedings.

The charge and amended charges in 34-CA-10176 were filed on July 25, August 27 and October 28, 2002. The charge and amended charges in 34-CA-10202 were filed on August 27, September 23 and October 28, 2002. The charge and amended charge in 34-CA-10283 were filed on November 8, and December 12, 2002.

A Consolidated Complaint was issued in 34-CA-10176 and 34-CA-10202 on October 30, 2002 and another Complaint, in 34-CA- 10283, was issued on December 12, 2002. Thereafter these Complaints as well as the Objections and Challenges were consolidated for hearing. In substance, the allegations are as follows:

- 1. That from June 30, 2002, a majority of Respondent's employees in an appropriate bargaining unit, designated the Union as their bargaining representative.
- 2. That on or about July 12, 2002, the Respondent for discriminatory reasons discharged Daniel LaPointe.

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- 3. That in on or about certain indeterminate dates in July 2002, the Respondent by Rosario (Roy) Fazzina, its President, (a) created the impression of surveillance, (b) threatened employees with job loss and reduction of hours, (c) interrogated employees, (d) promised benefits and (e) threatened that employee benefits would be withheld.
- 4. That on or about July 22, 2002, the Respondent refused to recognize the Union as the exclusive bargaining representative.
- 5. That on or about July 19, 22, and 23, 2002, the Respondent, for discriminatory reasons suspended and discharged Diane Delisle.
- 6. That from July 22 through July 26, the Respondent, for discriminatory reasons, removed Paul Lockhard from the work schedule.
 - 7. That on or about July 22, 2002, Fazzina created the impression that its employee's union activities were under surveillance.
- 8. That on or about July 23, 2002 and through mid August, 2002, the Respondent impliedly threatened employees with job loss by placing "For Sale" signs in the windows of vehicles.
- 9. That on or about July 26, 2002, the Respondent, for discriminatory reasons, discharged Wilfredo Maldonado.
 - 10. That in or about early August 2002, the Respondent by Salvatore Marotta, its Secretary/Treasurer and Fazzina, (a) interrogated employees about union activities, (b) told employees that it would be futile to select a union, and (c) threatened to discharge employees for supporting the Union.
 - 11. That on or about August 15 and 22, 2002, the Respondent granted wage increases to employees in order to dissuade them from voting for the Union.
 - 12. That on or about August 19, 2002, the Respondent by Fazzina, and Luis Flores, a supervisor, (a) prohibited employees from being on the Respondent's premises while off duty, (b) threatened employees with unspecified reprisals, (c) threatened to reduce work hours, (d)

engaged in surveillance of employee union activities by searching personal belongings for union paraphernalia, (e) threatened job loss and (f) prohibited employees from possessing union paraphernalia.

- 13. That on or about August 20, 2002, the Respondent by Fazzina (a) threatened employees with unspecified reprisals and (b) orally promulgated a rule prohibiting employees from being on the Respondent's premises while off duty.
- 14. That on or about August 22, 2002, the Respondent by supervisors John Boyd or
 Luis Flores Sr., (a) created the impression that the employees' union activities were under surveillance, and (b) prohibited employees from being on the Respondent's premises while off duty. ¹
- 15. That since in or about September 2002, the Respondent, for discriminatory reasons, withheld employee wage increases.
 - 16. That on or about November 1, 2002, the Respondent, by Fazzina, threatened job loss if employees were to testify in support of the Union.
- 20 17. That on or about November 6, 2002, the Respondent, for discriminatory reasons, discharged Marilyn Garcia in violation of Section 8(a) (3) & (4) of the Act.
 - 18. That the unfair labor practices have made a fair election unlikely and that therefore, a bargaining order should issue on behalf of the Union for the following unit of employees:

All full-time and regular part-time drivers, dispatchers, mechanics and maintenance employees employed by the Respondent at its Rocky Hill, Connecticut facility; but excluding all office employees, clerical employees, and guards, professional employees and supervisors as defined in the Act.

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Based on the evidence as a whole, including my observation of the demeanor of the witnesses and after consideration of the Briefs filed, I hereby make the following findings and conclusions.

Findings and Conclusions

I. Jurisdiction

It is admitted that the Respondent is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. It also is admitted that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II Alleged Unfair Labor Practices

(a) The commencement of the Union's campaign

The Respondent is engaged in the business of transporting people, (mostly disabled, elderly, or children), in and around Connecticut. It has an office above a restaurant in a

¹ At the hearing, the General Counsel withdrew the allegation that on or about August 22, 2002, the Respondent created the impression of surveillance.

building on a suburban shopping plaza owned by Roy Fazzina. It also has a garage and parking area for its vehicles across the street on Silas Deane Highway.

The present owners of the business are Roy Fazzina and Sal Marotta. The Company concedes that John Boyd is a supervisor but asserts that Luis Flores Sr. is not.

With respect to Flores, who also drives, the evidence shows that as part of his normal duties, he visits with the drivers when they are at their resting locations between assignments and that he monitors them for their uniforms and the conditions of their vehicles. There was documentary evidence to show that Flores has issued warnings to employees and has, in some cases, sent employees home for infractions of the Company's uniform policy. In my opinion, the evidence regarding his status is not particularly decisive one way or the other, and at best would indicate that he was a very low level supervisor. But, having to make a call, and inasmuch as the Act requires only that a person have only one of the statutorily defined attributes of supervisory authority, I will conclude that he was a supervisor by virtue of the evidence indicating that he had the authority to discipline. *Heartland of Beckley*, 328 NLRB No. 156 (1999); *Biewer Wisconsin Sawmill*, 312 NLRB 505 (1993

The Union's organizing campaign got underway in May 2002, when Ruben Bianco, one of the Company's dispatchers, called the Union and arranged for a meeting. An initial meeting was scheduled between union organizers and employees in late May, but was cancelled due to illness. The first meeting between employees and union representatives took place on June 22, 2002. Thereafter meetings were held on June 30, July 14, and July 20. (These were all on weekends).

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Among the employees most involved in the union organizing campaign were Ruben Bianco, Diane Delisle, Marilyn Garcia, Stavro Tata, and Wilfredo Maldonado.

Of approximately 37 employees who were employed during June and July 2002, 22 signed a petition authorizing the Union to represent them for collective bargaining purposes. Further, 22 employees attended one or more meetings held at the Union's offices during June, and July 2002, the period before the Union filed its election petition. While, the Union advised employees to keep their union activities secret from management, it is hard to imagine that with more than half of the employees attending union meetings, no one informed someone from management as to what was going on.

Daniel LaPointe testified that in the latter part of June 2002, he asked Sharon Partridge if she would like to join the Union and she responded, "I don't want to go against my dad." (She did not testify). Partridge, who is employed as an office clerical, is the daughter of Roy Fazzina. And although there is no claim that she is a supervisor or agent of the Respondent, it seems to me that it would be highly probable that she would have told her father about this approach. The Respondent did not call Partridge as a witness.

Diane Delisle testified that on two occasions before July 18, 2002, she heard Fazzina ask if employees were going to see their buddies over the weekend. Additionally, Marilyn Garcia testified that sometime in June or July 2002, she heard Fazzina make statements in the office such as "I know who you guys are," and "you guys are going to pay for this." The General Counsel suggests that these types of statements reported by Delisle and Garcia show that Fazzina was aware of union activity. However, Garcia had difficulty placing when she heard these comments and at first placed them after July 23, 2002. Suffice it to say that if this was the only evidence showing knowledge, it would be a slim reed indeed.

Paul Lockhard testified that sometime in mid July 2002, (about 2 weeks before he went on vacation on July 29, 2002), he had a conversation with Sal Marotta, one of the owners, who said that he and Roy were going to be talking to the employees about the Union and asked why Lockhard wanted a union which represented auto workers. According to Lockhard, he responded that the Union represented a much broader spectrum of workers in industries other than the automobile industry. Lockhart states that Marotta said that he didn't think the Union was in the best interest of the employees; that instead of being able to directly approach management, the employees would have to go through a union if it was selected. According to Lockhard, Marotta stated, in substance, that because of the union campaign, raises and a 401(k) plan were frozen because the company was not allowed to make changes.

Marotta testified that he spoke to at least 10 employees about the company's position regarding the election and did so in conformity with a set of talking points set up by his attorney. In this regard, he testified that the Company did not retain Mr. Palermino until about July 25 or 26, after receiving the election petition. Indeed, the testimony of Lockhard is substantially similar to Marotta's version and both are of a type that sounds like it was vetted by an attorney. Marotta asserts, however, that these conversations took place in August 2002. Assuming that counsel was not retained until after July 23, Lockhard's version of this conversation, while likely accurate in terms of its substance, would not have taken place before July 22, 2002, the first date where it can *unequivocally* be said that the Company had knowledge of union activity. Thus, by itself, the testimony by Lockhard that he had this conversation with Marotta in mid July rather than in early August is uncertain. And the timing of this conversation is important in evaluating whether certain actions taken before the morning of July 22, 2002 were motivated by anti union considerations.

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(b) Daniel LaPointe

On July 11, 2002 Daniel LaPointe, after delivering a client passenger to his assigned destination, gave a ride to the passenger's mother who was not an assigned customer. In this respect, he gave a free ride to a passenger and this is contrary to company policy. LaPointe, as noted above, had earlier and perhaps foolishly, solicited Fazzina's daughter to join the Union.

On July 12, 2002, LaPointe was called into the office by Fazzina and Marotta and asked about transporting the unauthorized individual. He admitted that he did and was discharged. According to LaPointe he was told that he had broken the law by transporting the individual and that he also had been stealing time by punching in and "going across the street and goofing off."

With respect to this conversation, Fazzina asserted that LaPointe at first denied that he gave an unauthorized ride and then admitted it later on in the conversation. Fazzina testified that he considered LaPointe's initial denial to be a lie and that had he not lied about the incident, he might have given him a second chance.

On or about July 12, 2002, Paul Lockhard had a conversation with Fazzina wherein he opined that firing LaPointe for transporting a client's mother was excessive and cruel. According to Lockhard, Fazzina told him that he didn't know the whole story; that in addition to this incident, LaPointe had been coming in early and staying later after his hours for a considerable amount of time.

There is nothing in Connecticut law that precludes either the Company or its drivers from giving a free ride to anyone. As long as the driver has the proper license, he is authorized to transport certain categories of people consistent with that license. And to the extent that the law regulates fares, it sets rates that a company can charge for transportation when it charges a

fee. Thus, an assertion that LaPointe violated the law by giving a person a free ride is not correct. What is correct and obvious is that it would violate the Company's policy. After all, the Company's business is transporting people for money. (There is no dispute that when prior permission is sought and granted, a driver can transport someone like a child or spouse while using a company vehicle).

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Although LaPointe did violate company policy by giving someone a free ride, his discharge for the infraction seems excessive unless he had a record of past violations and infractions. But his personal file did not reveal any prior warnings or disciplinary actions. And despite the Company's claim that he had been "stealing time" for four years, there is no indication in his file, or elsewhere, that LaPointe had ever been disciplined or even warned about such a habit. The fact is that LaPointe had been employed as a driver for about four years and had a clean record up until the incident on July 11 which occurred in the middle of the Union's organizing campaign and perhaps a week or two after he had an ill advised conversation about the Union with Fazzina's daughter.

(c) Diane Delisle

On July 18, 2002, supervisor John Boyd asked Delisle why she was not in the proper uniform inasmuch as she was wearing black shorts. (In the summer months, the required uniform is either black long pants or tan shorts). She replied that she had been given permission earlier in June to wear black shorts during that part of the month when she had her period. And in this respect, Delisle's testimony, which was credibly corroborated by other drivers, was that in June 2002, after an incident when Delisle stained her shorts, the women were given permission to wear black shorts when they had their periods.

Boyd wrote up an incident report regarding this event. Based on this report, Fazzina decided to suspend Delisle for a couple of days. This was accomplished, not by telling her that she was suspended, but by putting zeros on her beeper that evening which indicated that there were no assignments for her for the following day. (July 19, 2002). Thus, Delisle did not show up for work on Friday, July 19.

On Saturday, July 20, Delisle attended a meeting at the Union's offices. There, they signed a letter requesting recognition, which a group of employees, including Delisle, were to tender to the Company on Monday, July 22, 2002. This letter was signed by 17 employees including Delisle.

On Sunday, July 21, 2002, Delisle received three zeros on her beeper thereby indicating that there was no work for her on Monday, July 22.

On early Monday morning, July 22, 2002, a group of employees consisting of Delisle, Wilfredo Maldonado, Santa Ortiz and Ann Percy approached Fazzina where Delisle attempted to hand him a closed envelope containing the Union's demand letter. Before doing so, however, Delisle asked Fazzina why she had not been paged to come to work. He said because she was not in uniform and she replied that in June, he had given the women permission to wear black shorts once a month. Delisle testified that Fazzina responded that the rules had been changed and when challenged as to why he hadn't told anyone, he said that he didn't think he had to. According to Delisle, Fazzina said that he was suspending her for 2 days. At this point, according to Delisle, she attempted to hand him the letter, whereupon he handed it back stating that the employees were "illegally holding meetings," and that they should give the letter to his attorney. Ann Percy then attempted to hand the letter to Fazzina, but he again refused to take it. At that point, Delisle, Ortiz and Percy went upstairs and left the

envelope at a desk used by Fazzina in the dispatch office.

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The relevant events occurring on July 22 were credibly corroborated by other employees who were present. That is, they all confirmed that when asked about Delisle not being given work, Fazzina said that she was out of uniform. They confirm that Fazzina conceded that he had given permission to wear black shorts, but said that he had changed his mind. Also, they confirm that Delisle and then Percy attempted to hand the envelope to Fazzina who refused to take it and made some kind of statement about the employees holding illegal meetings. However, Maldonado, but not Percy or Cruz, testified that Fazzina told them that he would not take the envelope and that they should give it to his lawyer. (Recall that Marotta testified that the Company did not contact an attorney about the Union until around July 26 or 29, 2002).

Subsequently, on July 23, 2002, Delisle again went to the facility to ask Fazzina why she had not received a page to go to work. He responded in effect, no uniform, no work. When Delisle stated that in June, he had given permission to wear black shorts, he stated that he had changed his mind. According to Delisle, Fazzina claimed that she had many other warnings in her file and she requested a copy of her personnel file. When she received it on July 25, it showed no prior warning.

The last day that Delisle worked was on July 18. The Company concedes that she was in fact discharged, having made that decision on or about July 23, 2002. Fazzina's testimony was, in effect, that although he had pretty much made up his mind to fire her on July 19 because she had not worn the proper uniform on July 17 and 18, he was willing to change his mind if she had come in on July 23 and apologized. He asserts that inasmuch as she did not show up on July 23, he decided to fire her.

Fazzina testified that he never opened the envelope on Monday, July 22 and was not aware that there was any union activity until he received, in the mail, the Union's election petition. (Filed on July 23). Moreover, Marotta testified that because he was on vacation during the week of July 22, he did not become aware of any union activity until Friday, July 26 when he returned from his vacation.

Frankly, I find it hard to believe either Fazzina or Marotta. I think that it stretches credibility to conclude that having been handed an envelope by a group of employees Fazzina wouldn't have opened it once he got back to the office. Second, when asked about his vacation, Marotta testified that he had a cell phone with him and I find it improbable that having received an NLRB election petition, Marotta, as one of the owners, would not have been called. After all, an election petition filed with an agency of the United States is not a completely trivial matter.

(d) Wilfredo Maldonado

In the meantime, on or about July 19, David Jones, one of the dispatchers, discovered that Maldonado did not have a license to drive passengers for hire. ² Apparently what happened was that before obtaining his job at Ambassador, Maldonado, who had a Florida

² In Connecticut there are different endorsements and restrictions required for people to drive for hire. A "P" endorsement is required to drive any passengers. But in order to transport students to and from schools, one needs an "S" endorsement. And to drive children but not to and from school, a driver would get a "V" endorsement. To driver larger vehicles, such as a bus one needs to get a commercial license.

license, had applied for a Connecticut license with a "P" endorsement and the approval letter had been sent to his sister's address. So when he went to the Department of Motor Vehicles, (DMV), on Saturday, July 20, Maldonado found out that he would have to reapply for the "P" endorsement. He was told that this might take two to four weeks.

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According to Maldonado, on Monday, July 22, 2002, he spoke to Fazzina about what had happened and told him that it would possibly take two weeks for all of the paper work to be completed. He states that Fazzina responded that he should take two weeks off and when he got his "P" endorsement, he should report back to work. This conversation would have been on the same day, but sometime after he and the other three employees had attempted to hand Fazzina the Union's demand letter.

If that were the entire story, I would dismiss this allegation outright. For without the "P" endorsement, it would be illegal for Maldonado to drive any passengers for hire in the State of Connecticut. And if he were discovered doing so by a police officer, he would be arrested and immediately taken off the vehicle. Also, if the Company knowingly permitted an employee to drive without the proper license, that would, if caught, put the Company's right to do business in jeopardy.

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But that is not the entire story. Instead of simply telling Maldonado that he should report back to work when he got his license straightened out, Fazzina sent him a letter dated July 26, which stated that Maldonado could apply for employment when he got his license. The letter also asserted that Maldonado had abandoned his employment because he had been absent from work for more than 3 days without notifying the Company and that he therefore was being removed from the payroll. The whole tenor of this letter, with its false assertion that Maldonado had failed to give notice of his absence, is that the Company considered Maldonado to be discharged and not temporarily unavailable for work. ³ And when Maldonado, on August 13, got his license with the "P" endorsement, he called up but was told by Fazzina that he wasn't sure that there would be any work for people with a "P" endorsement. At no time thereafter, did the Company notify Maldonado to report for work.

(e) Paul Lockhard

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Paul Lockhard was normally assigned to drive vehicle 74. (A Ford van). For almost a year, that vehicle had a problem with its air conditioning system and an attempt to repair it, did not help much. There is no dispute that Lockhard had complained about the air conditioning in vehicle 74 and that it was not working properly as of late July 2002.

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Lockhard was one of the employees who had gone to meetings and who had signed the Union authorization petition. Also, as noted above, he had earlier questioned Fazzina about LaPointe's discharge and had told Fazzina that he thought it was excessive and cruel.

On Saturday, July 20, 2002, Lockhard attended a union meeting and signed the letter

³ Indeed, Fazzina testified that Maldonado was fired because he didn't have the proper license. I should note that the General Counsel called Fazzina as a witness in her direct case and was given permission to examine him pursuant to Rule 611(c) which allows leading questions of an adverse witness, a hostile witness or a witness identified with an adverse party. Upon completion, I denied Respondent counsel's request to interrogate Fazzina by leading questions as Fazzina was his own witness. I indicated that counsel could recall Fazzina as part of the Respondent's case after the General Counsel rested. But he never did so.

that was presented to the Company on July 22, 2002.

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On Sunday, July 21, Lockhard received a message on his beeper, (000), indicating that he was not assigned to work the following day. The following morning, he called David Jones, a dispatcher, who told him that although Lockhard had originally been scheduled to work on Monday, "something had changed."

From July 23 to the end of the week, Lockhard called in each day and was told that there was no work for him. He testified that when he went to the office on Thursday, July 25, to pick up his check, he mentioned to Fazzina that he hadn't worked all week and that Fazzina shrugged and said that it had been slow. Lockhard also testified that Fazzina said that another company, American Medical Response, was hiring. (In the circumstances of this case, I would tend to view this statement as an implied threat of discharge).

Also on July 25, according to Lockhard, he saw that some vehicles in the parking lot had "for sale" signs on them including vehicle 74, which was the van that he normally drove.

From July 29, 2002 to August 9, 2002, Lockhard went on a previously scheduled vacation. Toward the end, he called up to ask for an additional day off on Monday, August 12, 2002. During his conversation with Fazzina, Lockhard was told that he could take the additional day off, but that there was nothing for him to drive when he came back. According to Lockhard when he asked about vehicle 74, Fazzina said that the air conditioning was not working.

Lockhard went to the facility on Monday, August 12, whereupon he and Fazzina inspected vehicle 74. This showed that although cool air was coming out in the back, nothing was coming out in the front. Fazzina, according to Lockhard, said that he didn't want to put any more money into the vehicle, whereupon he pointed to vehicle 70, (which had a "for sale" sign on it), and told Lockhard that he should put the sign in the trunk and start driving it the following day. And that is what happened.

(f) "The For Sale" signs

At some point during the week of July 22, and after receipt of the union's demand for recognition, the Respondent put "for sale" signs on about 8 of its vehicles. Of these, two were Kias that everyone agrees had been for sale for a long period of time. A third was vehicle 74, which is the van which had the air conditioning problem. The others were older six cylinder sedans that Marotta testified were no longer useful to the business. The signs remained on the vehicles until shortly after the election.

The General Counsel argues that whether or not the company had a legitimate reason for selling these vehicles, the placing of "for sale: signs on them constituted a threat of reprisal.

The evidence shows that the Company buys and sells vehicles as a regular part of its business. When vehicles put on too much mileage or otherwise are too much in need of repair, the Company may try to sell them, (usually to employees or their relatives), or use them for spare parts or simply junk them. In the past, the Company has never advertised the sale of vehicles by placing "for sale" signs on them; this being an ineffective means to dispose of them.

I am going to accept Marotta's testimony that the vehicles in question were no longer of economic value to the Respondent and that the attempt to sell them was legitimate. As such, it seems to me that placing "for sale" signs on them was not the type of act which was inexplicable

or calculated to send a message to employees that unionization might cost them their jobs. Therefore, I will dismiss this allegation of the Complaint and overrule the Objections to the extent that they allege this conduct. ⁴

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(g) Wage Increases

The evidence shows that prior to the election scheduled for August 22, 2002, the Employer granted wage increases to some of its employees. The employees listed below received raises on August 15, 2002.

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	<u>Name</u>	<u>Amount</u>
	John King	\$8.50 to \$9.00 per hour
	Mary Feliciano	8.50 to 9.00 per hour
	Lourdes Figueroa	8.75 to 9.00 per hour
15	Luis Flores, Jr	9.00 to 9.25 per hour
	Mark Marinaccio	9.75 to 10.00 per hour
	Robert Quinn	9.25 to 9.50 per hour
	Yolanda Rivera	9.00 to 9.25 per hour
	Dominga Rodriguez	9.25 to 9.50 per hour
20	Angel Rosado	9.00 to 9.25 per hour
	Samuel Sierra	8.75 to 9.00 per hour
	George Stovall	9.00 to 9.25 per hour
	David Yush	8.75 to 9.00 per hour

The following employees received raises on August 22, 2002.

Name Amount

Alex Aviles 9.25 to 9.75 per hour Janice Baez 8.75 to 9.00 per hour

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With respect to the granting of these wage increases, the Respondent's counsel had this to say in a position statement forwarded to the Regional Office.

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1. Roy Fazzina reviews the payroll periodically to determine if raises are necessary for the staff. There is no set time frame for the raises, but typically drivers are started at \$8.00 per hour, and given a pay increase of .50 per hour after the completion of training. An additional .25 per hour is paid for CPR certification. Employees who transport school children will be paid \$9.25 per hour. After this, raises are given in .25 to .50 cent increments, until an employee reaches the

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⁴ In my opinion, this situation is different from the cases cited by the General Counsel. In *Russell Newman Mfg. Co., Inc.*, 153 NLRB 1312, 1314 (1965) and *De Luca Brothers Inc.*, 201 NLRB 327, 331, for sale notices were placed on the companies' buildings indicating, in conjunction with other evidence, to a reasonable person that the business, or a part thereof, was being put up for sale. In *Russell Newman*, the Board noted that the "for sale" sign was posted on the main building and that in a speech to employees, the Respondent's agent stated that it would retaliate against employees if they supported the Union. In *DeLuca*, the evidence showed that the Employer explicitly told employees that he couldn't afford the union and would go out of business before letting a union in. Here, the "for sale" signs were placed on at most eight vehicles, two of which already were known by employees to be up for sale, and the remainder on older cars, either with high mileage or damage of one sort or another.

maximum of \$9.75 per hour, or \$10.00 per hour for an employee with a CDL license. Any raises beyond \$9.25 per hour are given for performance reasons.

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- 2. The raises, which were given on August 22, 2002, were received by staff late in the afternoon on August 22, 2002. As a general rule, Mr. Fazzina does not discuss raises with staff, but simply makes the pay adjustment. The employee becomes aware of the increase when his paycheck is received. The raises in question were handled in this manner, and employees were not aware of the raises until received.
- 3. Mr. Fazzina granted the raises because he believed that if the Union won the election, all wages would be frozen. Given this, Mr. Fazzina gave employees raises in accordance with his normal practice, and in an attempt to retain staff. Mr. Fazzina believed that if he was unable to give raises to these employees, it would result in a number of resignations and pose staffing problems for the company.
- 4. Mr. Fazzina did not know the employees' position on the Union election. He did not discuss the raises, nor the Union election with any of the employees.
- An employer that grants wage increases or other benefits while an election petition is pending will be held to violate the Act unless it meets its burden of proof by showing that the increases either had been planned prior to the Union's advent on the scene or that they were part of some established past practice. *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (l963); *Baltimore Catering Co.*, 148 NLRB 970 (l964). Further, where the announcement of a benefit is timed so as to influence the outcome of an election, the Board may find a violation of the Act even where the benefit had previously been planned. In *NLRB v. Pandel-Bradford* 520 F 2d. 275 (1st Cir., l975), the Court stated:
 - The Board has long required employers to justify the timing of benefits conferred while an election is actually pending. Justifying the timing is different from merely justifying the benefits generally. Wage increases and associated benefits may be well warranted for business reasons; still the Board is under no duty to permit them to be husbanded until right before an election and sprung on the employees in a manner calculated to influence the employees' choice. (Citations omitted).

In Mountaineer Petroleum, 301 NLRB 801 (1991), the Board stated:

The validity of wage increases or other benefits during the pendency of representation petitions turns upon whether they are granted "for the purpose of inducing employees to vote against the union." ... Under settled Board policy, a grant or promise of benefits during the critical pre-election period will be considered unlawful unless the employer comes forward with an explanation, other than the pending election, for the timing of such action.

From its statement of position, it is clear that the Respondent had not planned to give these particular raises prior the filing of the representation petition and did not have an existing practice of granting such raises at this time of year. Indeed, the Respondent gave these raises at this time only because the petition had been filed. Accordingly, I conclude that by granting these wage increases, the Respondent violated Section 8(a) (1) of the Act. I further conclude that Objection No. 10 has merit and that the election should be set aside based on that alone. B & D Plastics, 302 NLRB 245 (1991); Gulf States Canners, 242 NLRB 1326 (1979)

(h) Other pre-election 8(a)(1) allegations

According to Santo Ortiz, (Missy), sometime in August, 2002, Roy Jones told her that she was doing a good job and she told him that she was having second thoughts about the Union. She testified that at the end of the day, she was called into the office where Fazzina and Marotta told her that there were other drivers who regretted signing for the Union. She states that they told her that they had a small company, that there was no promise that employees were going to get raises and that they had the books to prove it. She also testified that they told her that the Union was going to take a weekly amount of money from her wages. (Presumably dues).

Marilyn Garcia testified that on or about August 19 or 20, 2002, Fazzina and Marotta spoke to her about the Union in the office. She testified that Marotta said, "Why would I want to vote for a union;" and that it would cost thousands of dollars that she couldn't afford. According to Garcia, he stated that it could take years to settle a contract and that it was "up to him." She testified that they were cracking jokes about it and she thought it was funny. She also testified that at some point Marotta said that if there were any problems in the Company, she could come and talk to him.

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The remarks described above by Santo and Garcia, even if accurately reported, do not amount to a violation of the Act. ⁵ Their testimony proves only that on these two occasions, Marotta and/or Fazzina probably told them that a union would seek dues and that it couldn't automatically make good on its promises because if the Union was chosen, all that was required was bargaining. Also, a statement that employees could talk to the Company about problems is not, without a promise, the basis for finding an 8(a)(1) violation. *Genzer Tool and Die Corp.*, 268 NLRB 330 (1983); *Uarco Incorporated* 216 NLRB I (I974); *Reliance Electric Company, Madison Plant Mechanical Drives Division,* I9I NLRB 44, 46 (I971). Finally, a statement in this context, as to why she would want to vote for a Union, is not interrogation, but rather a rhetorical question.

Rubin Blanco was called to testify by the General Counsel but turned out to be a "hostile" witness. (Although he was the person who initially contacted the Union, he sought to have the NLRB proceedings withdrawn). It should be noted that Blanco is a dispatcher who, unlike the drivers, works in the office in close proximity to Fazzina and Marotta. Reluctantly, he testified that on or about August 19, 2002, he overheard supervisor John Boyd say that "after Thursday, six of them are getting what they deserve." He also testified that on that date he heard Fazzina make a comment to employee John Stewart that he was going to bring everyone down to 32 hours per week. Finally, Blanco testified that on August 20, (two days before the election), he heard Fazzina tell Boyd, "I have people coming in to start;" that "none of our present workers are going to do school kids, I'm going to fuck them." ⁶

⁵ I think that both witnesses truthfully testified about what they remembered. But as can be seen from the transcript, their recollections were somewhat jumbled and amount to, in my opinion, a truthfully intended reconstruction of what they heard and not verbatim recollections.

⁶ Blanco also was referred to his pre-trial affidavit and asked if Fazzina told him "you guys better win the election because I'm going to get rid of you all, one by one if you don't win." Blanco did not or would not recall this statement in his testimony although acknowledging that if it was in his affidavit, he must have told this to the NLRB investigator. For better or worse, this acknowledgment is not, in my opinion, sufficient affirmative evidence of the actual transaction to base a violation of the law. It does not, however, make all that much difference and does not Continued

Based on the reluctant testimony of Blanco, which I credit, I conclude that the Respondent's supervisors and owners made at least one statement to an employee, which can be construed as a threat of reprisal in violation of Section 8(a)(1). (Threat to reduce employee hours and therefore wages). This would also support Objection Number 5.

As to the other alleged statements that were overheard by Blanco, one was made by Fazzina to a supervisor and therefore cannot be construed as a violation of the Act. And the other was made to some unidentified person who could have been another supervisor. Therefore, although these two statements are evidence of anti-union animus, unless it can be shown that they were directed to employees, they would not violate the Act.

Marilyn Garcia testified that on or about August 19 or 20, she had some t-shirts with union logos in the vehicle that she was driving and that at her rest area, Louis Flores looked into the vehicle, opened the bag in which the t-shirts were contained and told her that she had to get rid of them. Flores essentially acknowledges that he saw the t-shirts in her car, (although denying that he opened her bag), and after contacting the office was told by management to order Garcia to take them home.

If Garcia had been wearing the t-shirt, there might have been an interesting question as to whether the Company could order her to take it off because it was not part of the required uniform. But that is not the case. Here, the Respondent ordered Garcia to remove union t-shirts from the vehicle which, presumably, she was transporting to hand out to other employees. This is not an earth shattering incident. Nevertheless, it is my opinion that it does constitute unwarranted interference with employee protected union activity. The fact that the Company owns the vehicles, does not, in my opinion, preclude employees from using them in an *unobtrusive* way, to transport union literature or insignia which is intended for distribution to other employees. (It would be another story, if an employee draped a large union sign on one of the company's vehicles and drove it around the city while at work.) Accordingly, in this regard, I conclude that Flores acting on orders from management, violated Section 8(a)(1) of the Act by ordering Garcia to remove the union t-shirts from the vehicle. (I do not find, however, that his actions constituted surveillance).

There was an incident that occurred on or about August 19, 2002, when Maldonado, (who had earlier been taken off the payroll), came to pick up Ann Percy and the two of them were parked in front of the store that rents space from Fazzina. After talking for about 15 minutes, Fazzina approached them and told them to leave the property.

In a related vein, the evidence shows that on the afternoon of the election, (August 22), the Respondent instructed Flores to tell employees, after they had voted, to leave the property. In this regard, Flores apparently told those people whom he understood were union supporters that their colleagues were over at a restaurant called Mitchell's.

The General Counsel contends that by these actions on August 19 and 23, the Company established and enforced a rule prohibiting off duty employees from having access to the Company's property in order to prevent them from engaging in union or protected concerted activities. In my opinion, such a conclusion is too far a stretch from what the evidence will bear. While it is true that on these two occasions, the Respondent's agents told off duty employees to leave the property, these were essentially isolated events. There is no evidence that a rule was

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affect the overall findings in this case.

ever enacted, or that employees were prohibited from hanging around the property, either in or out of the office, unless the office became too noisy or congested, or if employees were using the parking spots in front of a lessee's business. As such, I conclude that in this respect, the Respondent has not violated the Act.

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(i) Withholding Wage Increases

The Complaint alleges that in September 2002, (after the election), the Company withheld wage increases from certain employees who otherwise would have received them. In this regard, the affidavit of Fazzina states the following:

The procedure for wage increases is informal. I make the decision as to wage increase. When I hire someone, I usually start them at \$8 per hour while training. After training, they go to \$8.50 per hour. If an employee has a CPR Card, they will get \$8.75 an hour. If they do school work, then they will get another 50 cents an hour, from \$9.25 an hour. If an employee works for a while without accidents [and] do good work, they will get wage increases usually of about 25 cents. There is no set range of time for making that assessment. For instance, Lucy was hired at \$8, and went to \$8.50. After training within a few weeks, she has a CPR Card bringing her up to \$8.75. She does school work, so she gets \$9.25. As of September, she should have been getting \$9.75. But because I decided not to give wage increases after the charge was filed, allegedly I was giving wage increases in violation of the law, everything was frozen. Mr. Quinn was hired a couple of years ago and was doing school work last year with a CPR Card, and no accidents. Since he was making only \$9, I brought him up to \$9.50, on August 14, 2002. It should be \$9.75, but as mentioned above everything was on hold. It has been the last couple of years that I have used the above system in determining wage amounts.

Thus, according to Fazzina's pre-trial statement, he withheld wage increases from Lucy and Quinn because a charge had been filed which alleged that the Company had unlawfully granted wage increases in August 2002.

It may seem that allegations that the Respondent granted wage increases in August and then withheld wage increases in September would be contradictory and mutually exclusive. But they are not.

Either way, (the granting of, or the withholding of a benefit), the key is that an employer, faced with an election petition, is required to run its business in accordance with its customary practices. The granting of a wage increase is presumed to be unlawful unless the employer can show that it either was planned before the petition was filed or that such a wage increase customarily was granted at that time. Similarly, an employer is required to maintain the status quo ante with respect to the granting of wage increases or other benefits. So, if for example, as in the case of Lucy, the employee would normally have been granted a wage increase because she met certain pre-existing criteria, it is unlawful to withhold that benefit in these circumstances.

Moreover, inasmuch as Fazzina concedes that certain employees, who otherwise were entitled to wage increases had them withheld because an unfair labor practice charge was filed, this is, on its face, a violation of Section 8(a)(1) & (4) of the Act. *Pinter Bros., Inc.*, 233 NLRB 575 (1977).

(i) Marilyn Garcia

Marilyn Garcia was one of the Union activists who had been employed as a driver for about 5 years. It seems that at one time she was a friend of Denise Little, but for one reason or another, their relationship had soured. As noted above, Little worked in the office but also worked as a part-time dispatcher.

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In or about May 2002, Garcia's wages were garnished because of a non-payment of a debt. Thereafter, for a period of time, she had dealings with the court and the creditor's lawyer in an effort to reduce the amount of the payments that would be deducted from her wages. And in this she ultimately was successful in reducing that amount. In the meantime, Denise Little, as part of her job, received a number of documents relating to the garnishment, which she placed in Garcia's personnel file and also forwarded to the Respondent's payroll company.

On some date in late August 2002, Garcia had an argument with Little wherein she asserted that Little had allowed another employee, Stavro Tata, to look at the garnishment papers in her personnel file. According to Garcia, she found out about this when Tata returned from his vacation, (on August 26), and asked her about the garnishment. Garcia states that she asked Tata how he knew of this, and she asserts that he said that he had seen some papers that Little had left on her desk. Little denied that this was so, but does agree that Garcia accused her of doing this. Tata, who was one of the original union activists, denied that he ever looked at any such papers.

About two months later, on October 30, 2002, Garcia told supervisor Boyd that papers that belonged in her personnel file were left around for others to look at. She also complained about an incident where another employee had practically driven her off the road and a third incident where some unnamed employees had thrown something at her while she was going down the stairs. Boyd made an incident report of his conversation with Garcia and turned it into the office. He noted in the report that Garcia was complaining that Little had allowed Tata to look at papers in Garcia's personnel file and that she was also complaining about the spitball incident. (The report did not mention the other incident). In his report, Boyd stated that Garcia was thinking of leaving her employment.

On November 1, 2002, Garcia was called into the office and asked by Fazzina about Boyd's report. She signed the report thereby affirming that the incidents were true. As a result, Fazzina and Marotta decided to call in the other people mentioned and question them about Garcia's accusations. This they proceeded to do and they questioned Tata, Little, David Jones and Sharon Partridge. These interviews were taped and a transcript of them was made and received into evidence. Suffice it to say that none of the other employees backed up Garcia's claims.

At the end of the day on November 1, Garcia was called back to the office where she was essentially told that her accusations did not have any merit. This precipitated a display of temper by both Garcia and Fazzina and ultimately Garcia was asked by Fazzina to leave the premises. She refused and Fazzina allowed her to stay in the TV room to wait for her ride.

According to Garcia, when Fazzina called her into his office, he said that he had just run an investigation and that Garcia was the f...ing problem. Garcia states that she got angry and asked how he could have already conducted an investigation to which he responded that he had investigated everything and that everything comes "back to you." She asked how he could have made an investigation so quickly and how was it that everything came back to her. According to Garcia, Fazzina was really angry and he kept telling her that she was the problem

and that she should get the fuck out of here and that if she was unhappy there, she could leave. Garcia states that she told Fazzina that she wasn't going anywhere as long as she worked there and that he yelled, "maybe if I didn't work there anymore, that I wouldn't be able to testify on January 13." According to Garcia, at some point, Marotta appeared and after a comment he made about the desirability of having surveillance cameras in the office, she asked if he was accusing her of stealing anything. He said no. She states that as she left the premises, Fazzina said, "have a nice vacation."

Fazzina did not testify about this meeting. And Marotta testified that he heard some but not all of what was said in the confrontation between Garcia and Fazzina. Essentially, Marotta testified that Fazzina told Garcia that they had conducted an investigation, that they didn't find anything to support her contention that anyone had seen her personnel records and that "it reverts back to you." He states that Garcia got very upset and said that they had interviewed the wrong people and that "you guys don't know what the fuck your doing; you don't know how to run this f...ing company." According to Marrota, Fazzina told Garcia that they had interviewed the relevant people and that she should leave, to which she replied; "I'm not f...ing going anywhere, I'm going to wait for my ride just like anybody else." He states that Fazzina said that she should leave the dispatch office and go across the hall. According to Marotta, as she left, he heard her say something like; "You have no balls," and that when Fazzina said "what" she reposted with; "Why don't you guys just f...ing fire me."

When asked if Fazzina said anything about testimony or testifying, Marotta said that he did not hear anything like that. But he also acknowledged that he wasn't present during the entire conversation and, as noted above, Fazzina did not testify about this transaction. In this regard, the General Counsel points out that the Consolidated Complaint was received by the Company on October 31, 2002 and that the Notice of Hearing set the hearing date for January 13, 2003.

On November 6, 2002, Fazzina sent a letter to Garcia, which stated, among other things;

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As you know, Sal and I have thoroughly investigated the complaints you put in with Mr. Boyd. We have also reviewed other complaints put in against you. Our findings are completely opposite of what you stated. In short, we found that you started rumors, spread misinformation and made false statements to other employees.

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When I tired to explain our findings, you verbally lashed out at me claiming that we are a very unprofessional company, that we don't know what we're doing and then you tried to provoke me into firing you.

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Your behavior has been detrimental not only to the company and other employees, but also with some of our clients. This behavior is not acceptable!

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In the best interest for the company and others, you leave me no choice but to grant your wish....

III Analysis

(a) The 8(a) (3) allegations

Pursuant to Wright Line 251 NLRB 1083, (1980) enf'd. 622 F 2d. 899 (1st Cir. 1981), cert

denied 495 U.S. 989, (1982), approved in NLRB v. Transportation Management Corp., 462 U.S. 393, 399-403 (1983), once the General Counsel has established a prima facie showing of unlawful motivation, the burden is shifted to the Respondent to establish that it would have laid off or discharged the employees for good cause despite their union or protected activities.

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In American Gardens Management Company, 338 NLRB No. 76, (2002), the Board noted that under Wright Line, the General Counsel is required to make an initial "showing sufficient to support the inference that protected conduct was a 'motivating factor' in the Employer's decision and if such a showing is made, the burden shifts whereupon the Employer is required to demonstrate that the same action would have taken place even in the absence of the protected conduct. The Board further stated that in order to meet the initial burden, the General Counsel must establish four elements; (1) the existence of activity protected by the Act; (2) the Employer's knowledge of that activity; (3) the imposition of some adverse employment action; and (4) the existence of a motivational link, or nexus, between the protected activity and the adverse employment action.

The present case presents a situation where the General Counsel has proved the existence of union activity by employees, the imposition of adverse employment actions and substantial evidence of anti-union animus by the Employer.

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The Respondent asserts, however, that at least some of its actions, particularly the discharge of LaPointe, the suspension and discharge of Delisle and the discharge of Maldonado occurred after it acquired knowledge of union activities. The General Counsel contends that the evidence, in its totality, shows that the Respondent gained knowledge of union activity well before July 22, 2002.

It is not always possible for the General Counsel, or anyone else, to obtain a witness who can testify that a company manager or supervisor told him that he knew by X date that the Union was engaged in organizing activity. Nor is it always possible to obtain an admission by a Respondent to such knowledge. Therefore, it is not uncommon for proof of knowledge to be inferred from circumstantial evidence.

In *Darbar Indian Restaurant*, 288 NLRB 545 (1988), the Board stated:

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[T]he Respondent contends . . . that the General Counsel failed to establish that it had knowledge of Saha's union activities. Although there is no direct evidence of the Respondent's knowledge, we believe that the circumstances here support an inference of knowledge based . . . on the Respondent's general knowledge of union activity among the small group of seven dining room employees, the timing of the discharge, the contemporaneous 8(a)(1) conduct, the shifting and pretextual reasons asserted for the discharge, and the absence of any incident involving Saha or any conduct by him to explain his discharge on June 8.

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Regarding the use of circumstantial evidence in proving knowledge and the broader question of discriminatory intent, the Board in Greco & Haines 306 NLRB 654 (1992) stated:

Under Board precedent, a prima facie case may be established by the record as a whole and is not limited to evidence presented by the General Counsel. Golden Flake Snack Foods, 297 NLRB 594, fn. 2 (1990). Thus, the absence of any legitimate basis for an action may form part of the proof of the General Counsel's case. Wright Line, 251 NLRB 1083 fn. 12 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). In addition, circumstantial evidence is sufficient to justify an inference of employer knowledge. Dr. Frederick Davidowitz, D.D.S., 277 NLRB 1046 (1985). Accord: NLRB v. Long Island Airport Limousine Service), 468 F.2d 292, 295 (2d Cir. 1972). Thus, under established precedent the judge could infer knowledge from the following: the timing of the allegedly discriminatory discharges and withdrawal of the use of company vans within days of the union organizing meeting; the abrupt termination of the leading union instigator and another union supporter who had both received raises the preceding week; the implausible and sometimes conflicting nature of the reasons advanced by the Respondent for its actions; and the union animus shown by the credited testimony of Alfred Signore that prior to the election company president Guy Greco stated that ``he needed to know who was going to be voting for the union so he knew who to keep." In addition, once the judge discredited Jeanne Connors' testimony that she was not told of the meeting until Saturday, July 28, he could conclude that the opposite was true. NLRB v. Walton Mfg. Co., 369 U.S. 404, 408 (1962).

The Respondent contends that we should not consider rebuttal evidence in determining whether the General Counsel has established a prima facie case. The Board's precedent allows the judge to analyze the prima facie case based on all record evidence. Further, the Second Circuit, in which this case arises, recently modified its view in Holo-Krome v. NLRB, 947 F.2d 588 (2d Cir. 1991), that rebuttal evidence should not be considered until the General Counsel has presented an adequate prima facie case. Upon the Board's petition for rehearing in *Holo-Krome*, the court held that ``[w]hen the Board reviews an ALJ's decision, and when a court of appeals reviews a Board decision, the reviewing bodies should be able to examine the entire record to determine if improper motivation has been shown " (Emphasis added.) Finally, even analyzing the evidence as the Respondent proposes, we still find that the General Counsel has presented a prima facie case based on the following factors: the abruptness and timing of the adverse actions; the Respondent's help-wanted advertisements for Service Techs, which appeared in newspapers the same week that Peter Sultzbach and Howard Wyllie were laid off for ``lack of work"; testimony that two new employees were hired shortly after the discriminatees were discharged; testimony that the two employees who did not attend the union meeting did not lose the use of vans for commuting to work; and the union animus reflected in the credited testimony of Alfred Signore quoted above. Abbey's Transportation Services, 284 NLRB 698 (1987), enfd. 837 F.2d 575 (2d Cir. 1988). 7

The evidence in this case shows that starting on June 22, 2002, groups of employees attended meetings at the Union's offices on four weekends before July 22. It is true that the General Counsel did not produce any witness who could testify that individuals who attended these meetings talked to Fazzina, Marotta or any other supervisors about union activity. On the other hand, a majority of the employees of the Company attended at least one meeting and in a relatively small company like Ambassador, the probability is that this occurred.

According to Daniel LaPointe, in the latter part of June 2002, he asked Sharon Partridge

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⁷ See also *Medtech Security*, 329 NLRB No. 81.

if she would like to join the Union and she responded that she didn't want to go against her father. Partridge, employed as an office clerical, is the daughter of Roy Fazzina, and it seems to me that it would be highly probable that she would have told her father about this approach. The Respondent did not call Partridge as a witness. Although not dispositive, this piece of uncontested evidence is, to my mind, relevant, in the overall proof that the Respondent's management had knowledge of union activity before LaPointe was discharged. *Allied Lettercraft, Co. Inc.*, 272 NLRB 612, 613 fn. 3 (1984); *Guyan Valley Hospital Inc.*, 198 NLRB 107, 114-115 (1972); *Mock Road Super Duper, Inc.*, 156 NLRB 983, 984 (1966) enfd. In relevant part, 393 F.2d 432 (6th Cir. 1968). 8

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Additional circumstantial evidence of knowledge was presented through the testimony of Diane Delisle and Marilyn Garcia who testified that before July 18, 2002, they heard Fazzina ask employees if they were going to see their buddies over the weekend and that he also made statements such as "I know who you guys are," and "you guys are going to pay for this." By themselves, these statements are not dispositive. But as pieces of a mosaic, each part adds up. ⁹

Paul Lockhard testified that in mid July, 2002, he had a conversation with Sal Marotta, who said that he and Fazzina were going to be talking to the employees about the Union and asked why Lockhard wanted a union which represented auto workers. Although I credit Lockhard as to the substance of the conversation, I have my doubts as to whether this conversation took place in July and not August 2002.

Fazzina testified that he first became aware of union activity on July 23, 2002, after receiving a copy of the Union's petition that was filed with the NLRB. Although acknowledging that a group of employees that included Delisle and Maldonado, handed him an envelope on Monday, July 22, Fazzina asserts that he didn't open or look at it even after it was put on a desk he used in the office. I find this highly improbable and I don't credit him on this point. In fact, I can't imagine that he didn't look at the letter as soon as he got back to the office. And this letter was a demand for union recognition that was signed by a group of employees, including Delisle, Maldonado and Lockhard, all of whom were affected by adverse company actions during the remainder of that week.

Similarly, Marotta testified that he didn't become aware of any union activity until, at the earliest, Friday, July 26 when he went to the office after being on vacation. Here again, this testimony strikes me as being improbable. Marotta took his family to Florida, but he had a cell phone and is an owner of the Company. It is hard for me to imagine any circumstance where a principle of a company would not be contacted, even if on vacation, when the Government sends notice that a union is seeking to have an election amongst the employees.

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Because LaPointe's discharge occurred on July 12, 2002, knowledge of union activity is more pressing in his case than in the others. But, as I have concluded above, that there is circumstantial evidence that Respondent's management was aware of union activity before his

⁸ But see *Martech Medical Products Inc.*, 331 NLRB 487 (2000), where an ambiguous conversation with a relative of the Employer was deemed insufficient to establish knowledge.

⁹ It would have been easy for Delisle and Garcia to testify that Fazzina asked if employees were going to a union meeting over the weekend. In part, because their testimony is more ambiguous, it has the ring of truth to it. Although I have concluded that these statements are relevant for proving company knowledge of union activities, it is my opinion that they are, by themselves, too ambiguous to warrant a conclusion that they constituted violations of the Act.

discharge, I think that the General Counsel has made a sufficient primae facie case.

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There is no dispute that on July 11, 2002, LaPointe gave a ride to an unauthorized individual. (A nonpaying person). But his discharge for this infraction, seems, in the context of the Company's past practices, to have been excessive. Moreover, Fazzina's assertion that his motivation to discharge LaPointe was based on the additional reason that LaPointe had been "stealing time," by clocking in early and then hanging around before going to work, strikes me as being pretextual. Fazzina asserted that LaPointe had been doing this for four years. Yet there is nothing in LaPointe's personnel file to indicate that this was ever a problem or that management ever disciplined him or even talked to him about this subject.

Proof of knowledge plays a similar role in the case of Diane Delisle because the record shows that she was suspended on July 19, 2002. But because Fazzina did not decide to discharge her until either Monday or Tuesday of the following week, the fact that the Union's demand letter was tendered to him on the morning of July 22, 2002, establishes that element of the primae facie case. Thus, even if it were to be found that the Company's management did not have knowledge of union activity at the time Delisle was suspended, they did have knowledge when Fazzina decided to discharge her.

In either event, I have concluded that the Company did have knowledge of union activity at a time prior to July 19, 2002. And I also conclude that the reason given for her discharge was pretextual. Although asserting that she was out of uniform on July 17 and 18, the evidence established that earlier in June, Fazzina had given her permission to wear black shorts instead of tan shorts when she was having her period. When confronted about this, Fazzina's only response was that changed his mind. (If he did change his mind, he forgot to tell any of the affected employees about this ahead of time).

Regarding Maldonado, there is no question that he did not have the proper license to drive a livery vehicle and that he informed the Company that he needed to clear this up with the Connecticut Department of Motor Vehicles. He also concedes that when he called the DOT, he was notified that he would have to start over from scratch and that it would take somewhere between two to four weeks to get his license. According to Maldonado, he told Fazzina about this on Monday, July 22, 2002 and that Fazzina told him to take two weeks off and to report back to work when he got his "P" endorsement.

Nevertheless, on July 26, Fazzina sent Maldonado a letter which, in effect, discharged him. This letter, which stated that Maldonado could apply for employment when he got his license, also stated that Maldonado had abandoned his employment and was removed from the payroll because he had been absent from work for more than three days without notifying the Company. Clearly this was not true, inasmuch as Maldonado had notified the Company that he needed to get his license straightened out. Had the Company simply placed Maldonado in a temporary suspension status, pending receipt of his license, that would have been understandable, because under Connecticut law, Maldonado could not drive a livery vehicle. But, the letter is an example of overstating the case by making an assertion that was not true.

Between Monday, July 22 when Fazzina told Maldonado to take a couple of weeks off, and Friday, July 26, when Fazzina notified him that he was no longer employed, there was an intervening event; namely that the Union had made a demand for recognition and had filed a petition for an election with the NLRB.

Regarding Lockhard, he was never discharged. Rather, he was not given work during the week of July 22, 2002. At most, he would have lost five days of pay.

Lockhard was one of the employees who had gone to meetings and who had signed the Union authorization petition. Also, he had earlier questioned Fazzina about LaPointe's discharge and had told Fazzina that he thought this was excessive and cruel.

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On Saturday, July 20, 2002, Lockhard attended a union meeting and signed the letter that was presented to the Company on July 22, 2002.

On Sunday, July 21, Lockhard received a message on his beeper, indicating that he was not assigned to work the following day. The following morning, he called David Jones, a dispatcher, who told him that although Lockhard had originally been scheduled to work on Monday, "something had changed."

From July 23 to the end of the week, Lockhard was told, whenever he called in, that there was no work for him. He testified that when he went to the office on Thursday, July 25 to pick up his check, he mentioned to Fazzina that he hadn't worked all week and that Fazzina shrugged and said that it had been slow. Lockhard also testified that Fazzina said that another company, American Medical Response, was hiring.

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From July 29, 2002 to August 9, 2002, Lockhard went on vacation. Toward the end of his vacation, he called up to ask for an additional day off on August 12, 2002. During his conversation with Fazzina, Lockhard was told that he could take the additional day off, but that there was nothing for him to drive when he came back. According to Lockhard, when he asked about vehicle 74, Fazzina said that the air conditioning was not working.

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Lockhard went to the facility on Monday, August 12, where he and Fazzina inspected vehicle 74. Although cool air was coming out in the back, nothing was coming out in the front. Fazzina, according to Lockhard, said that he didn't want to put any more money into the vehicle, whereupon he pointed to vehicle 70, (which had a "for sale" sign on it), and told Lockhard that he should put the sign in the trunk and start driving it the following day.

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Although the record shows that vehicle 74, which was the van that Lockhard normally drove, was legitimately put out to pasture, the Respondent has not shown that there was no other vehicle that he could have used during the period from July 22 to July 26. Had this taken place at some other time, the result probably would be different. But it is not surprising to me that the period of time that the Respondent could not find a vehicle for Lockhard, happened to be coincident with the tender of the Union's demand for recognition and the filing of the election petition.

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Marilyn Garcia, was one of the union activists who managed to survive in her employment after the first week when the petition was filed. As noted above, on August 19, 2002 she was ordered by Flores, on the direction of management, to remove t-shirts with union labels from the company vehicle that she was driving.

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There is no dispute that soon after the election, in late August 2002, she got into an argument with Denise Little and in effect accused her of showing Garcia's personnel file to Stavro Tata, who also was one of the early union supporters.

I am not sure what happened during the next two months, but this all seemed to come to a head when Garcia made complaints to John Boyd who relayed them to Fazzina and Marotta. These complaints, to the extent that they were written down by Boyd and signed by Garcia, involved Garcia's contention that some employees had thrown something at her in the stairwell

and that Denise Little had shown a garnishment report in Garcia's personnel file to employee Stavro Tata. The report also stated that Garcia was thinking of leaving the Company.

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On November 1, 2002, Marotta and Fazzina questioned some employees about Garcia's accusations and after ascertaining that they were not confirmed by anyone else, essentially told her that it all came back to her. By this, I take it to mean that Fazzina was accusing Garcia of making false accusations and thereby being a provocateur. When he said this to Garcia, she responded angrily that they, (Fazzina and Marotta), didn't know what they were doing and that they didn't know how to run the business. (Using more salty language). I also credit testimony that during this confrontation between Garcia and Fazzina, she told him that he didn't have the balls to fire her. (This might seem to some, a little like waving a red cape in a bull ring).

The key piece of evidence in favor of finding a violation of the Act, is Garcia's testimony that after being told to leave the premises, she told Fazzina that she wasn't going anywhere as long as she worked there and that he yelled "maybe if I didn't work there anymore, that I wouldn't be able to testify on January 13."

The evidence shows that the Complaint was received by the Company on October 31, 2002 and that the hearing date was scheduled for January 13, 2003.

Fazzina did not deny the statement that Garcia attributed to him about giving testimony. And Marotta, although testifying that he did not hear it, acknowledged that he was not present during the entire transaction. Therefore, find that these statement were made, and if made, constitutes direct evidence that a major reason why Fazzina decided to discharge Garcia, instead of imposing some lesser penalty, was because he was upset at having received the unfair labor practice complaint the day before.

In conjunction with my earlier conclusions that the Respondent violated the Act in various other respects, including the unlawful granting of wage increases and threats of reprisal, and my conclusion that the General Counsel has established that the Respondent had knowledge of union activity before discharging Paul Lockhard on July 12, 2002, I conclude that the discharges and other adverse actions described in this section of the opinion, violated Section 8(a)(1) and (3) of the Act. I also conclude that the discharge of Garcia violated Section 8(a) (4) of the Act.

Further in relation to the representation case, I conclude, based on the above, that because they were discriminatorily discharged, LaPointe, Delisle and Maldonado were eligible employees in the election that was held on August 22, 2002. Also, I conclude that the discharges of Delisle and Maldonado, respectively on July 23 and July 26, constitute objectionable conduct that occurred during the critical period between the filing of the petition and the date of the election. Therefore such conduct would be sufficient grounds to set the election aside.

(b) The 8(a) (5) allegation

In 1954, the Board in *Aiello Dairy Farms Co.*, 110 NLRB 1365 held that if a union participated in an election after the Employer had refused its request for recognition, it waived a bargaining order remedy. Under that case, if unlawful conduct was committed before an election, the Union's sole remedy was to have the election set aside and have a new election conducted. The *Aiello* decision was overruled in 1964 by *Bernel Foam Prods Co.*, 146 NLRB 1277 and the Board reverted to its pre 1954 doctrine. The Board stated:

[T]he so-called "choice" which the union is forced to make under *Aiello* between going to an election or filing an 8(a) (5) charge is at best a Hobson's choice. Although an election is a relatively swift and inexpensive way for the union to put the force of law behind its majority status, the procedure is highly uncertain entailing the real possibility that because of conduct by the employer no fair election will be held.

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Since this difficult and rather dubious "choice" is created by the employer's unlawful conduct, there is no warrant for imposing upon the union which represents the employees, an irrevocable option as to the method it will pursue... while permitting the offending party to enjoy at the expense of public policy the fruits of such unlawful conduct.

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The rule that a union does not waive any rights to a bargaining order because it proceeded to an election, was confirmed by the Supreme Court in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). In that decision, the Court decided four separate cases, one of which involving a company called General Steel. As to General Steel, the Court enforced a bargaining order where a union, initially having obtained authorization cards from a majority of the employees, had lost an election in which the Employer's conduct had invalidated the election.

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In *NLRB v. Gissel Packing Co.*, supra, the Supreme Court distinguished between three categories of situations insofar as the propriety of granting a bargaining order to remedy an employer's unfair labor practices. The first category involved the "exceptional" case where "outrageous" and "pervasive" unfair labor practices are committed. The second category involved "less pervasive practices" that have a tendency to undermine majority strength and impede the election process. As to this second category, the Court held that a bargaining order would be appropriate to remedy unlawful conduct which had the effect of making a fair election unlikely where, at some point, the Union had majority support. The third class of cases, concern those where minor or less extensive unfair labor practices have been committed which would have a "minimal impact" on an election. The Court held that in the third category of cases, a bargaining order would be inappropriate to remedy an employer's unfair labor practices.

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Where an election has been conducted, the Board has held that a precondition to the granting of a bargaining order is that the election must be set aside because of conduct interfering with the conduct of the election. *Irving Air Chute Co., Inc., Marathon Division*, 149 NLRB 627 (1964); *The Great Atlantic & Pacific Tea Company*, 230 NLRB 766 (1977).

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Before determining if a bargaining order would be warranted, it is first necessary to determine if there is evidence that the Union, at some relevant time, represented a majority of the employees within an appropriate unit.

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Here, the classifications of employees within the bargaining unit was determined by the parties themselves when the entered into a stipulated election agreement. Thus, included in the unit were the drivers, dispatchers, mechanics and maintenance employees and excluded were office employees, clerical employees, guards, professionals and supervisors as defined in the Act.

The Respondent conceded that Anthony Fazzina, (the owner's son), was not an eligible voter and therefore not within the bargaining unit.

The evidence showed was that Sharon Partridge and Rosa Rodriguez were employed in the office as clerical employees and therefore were not in the unit. With respect to Rodriguez, there was evidence that on rare occasions she acted as a substitute weekend dispatcher and did this from her home. This is not sufficient, in my opinion, to warrant her inclusion in the unit.

I have already concluded that although borderline, the evidence is sufficient to establish that Flores is a supervisor within the meaning of the Act and is therefore outside the unit.

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There was some evidence that Valerie Fazzina, another of Roy Fazzina's daughters, cleaned the premises at night. She had no contact with the other employees and in my opinion did not share a community of interest with them. There, I conclude that she is not in the unit.

Having concluded that LaPointe, Delisle, and Maldonado were discriminatorily discharged, I conclude that they should be included within the bargaining unit. Therefore, the fact that they signed the union petition authorizing it to bargain for them means that they should be counted towards the Union's majority status.

By July 12, 2002, the Union had obtained 21 employee signatures to a petition by which they authorized the Union to represent them for collective bargaining purposes. ¹⁰ And on July 22, 2002, there were 36 employees within the bargaining unit, consisting of 31 drivers, four dispatchers, (including Denise Little who, although the office manager, performed part-time dispatching functions on a regular basis), and one mechanic, (Donald Preneta). Moreover, even if we added Flores, Valerie Fazzina and Rosa Rodriguez, the unit would be 39 employees and the Union would still have obtained signatures from a majority.

The General Counsel contends that the conduct engaged in by the Respondent made a fair election improbable and therefore, despite the outcome of the election, a bargaining order should be issued to remedy the unfair labor practices. I agree and I conclude that this is a category II type of case under *NLRB v. Gissel Packing Co.* supra.

In *NLRB v. Jamaica Towing, Inc.*, 632 F.2d 208, 212, (2nd Cir. 1980), the Court indicated that there were certain "hallmark" violations that would ordinarily be considered as highly coercive and which would be grounds for finding that a fair election was not likely. Such "hallmark" violations, according to the Court, included threats of plant closure and job loss, grants of benefits, and discriminatory actions taken against union adherents.

In the present case, the evidence shows that shortly before and immediately after the Union made its demand for recognition, the Employer discriminatorily discharged three of its employees, (LaPointe, Delisle and Maldonado), and effectively suspended Lockhard for a week. These employees were all active union supporters and each had signed the union's letter demanding recognition that was tendered to Fazzina on the morning of July 22, 2002.

The evidence also establishes that in August 2002, the Employer granted a sizeable group of its employees wage increases and did so at a time when the election was pending. The evidence shows that these wage increases has not been previously planned or otherwise

¹⁰ In some cases, there was direct testimony about the signatories. However, as to others, I have, pursuant to 901 (b) (3) of the Federal Rules of Evidence, authenticated signatures by comparing them to exemplars such as W4 forms. *Parts Depot, Inc.*, 332 NLRB No. 64, slip opinion, page 5 (2000)

normally granted at this time of year. Thus, the inference is that they were granted and timed to affect the outcome of the election that took place on August 22, 2002.

Additionally, there is evidence that Fazzina threatened employees with reprisal in that he told Lockhard, before giving him vehicle 70, that there probably was no work for him and that American Medical Response was hiring. Also, Ruben Blanco testified he heard Fazzina make statements indicating that he intended to reduce the hours of employees and hire new drivers to replace existing ones.

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The violations found, are in my opinion "hallmark" violations and make the holding of a fair rerun election unlikely. Therefore, it is my opinion that a bargaining order is warranted. *National Propane Partners, L.P.* 337 NLRB No. 160; *Parts Depot Inc.*, 170 LRRM 1005. Moreover, the evidence shows that the Respondent continued to violate the Act after the election was held. Thus, I have concluded that in at least two instances, the Respondent failed to give normal wage increases to employees because the Union filed an unfair labor practice charge and that the Respondent discriminatorily discharged Garcia.

IV Conclusions of Law

- 20 1. The Respondent, Ambassador Wheelchair Services Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
 - 2. The Union, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Local 376, is a labor organization within the meaning of Section 2(5) of the Act.
 - 3. All full-time and regular part-time drivers, dispatchers, mechanics and maintenance employees employed by the Respondent at its Rocky Hill, Connecticut facility; but excluding all office employees, clerical employees, and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
 - 4. Since July 12, 2002, the Union has been and is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
 - 5. Since July 22, 2002, the Respondent has refused and is refusing to bargain collectively with the Union and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
 - 6. By discharging Daniel LaPointe, Diane Delisle and Wilfredo Maldonado in retaliation for their union membership and support, the Respondent has violated Section 8(a)(1) and (3) of the Act.
- 7. By discharging Marilyn Garcia in retaliation for the Union having filed an unfair labor practice charge, the Respondent has violated Section 8(a) (1) and (4) of the Act.
 - 8. By suspending Paul Lockhard from July 22 through July 26, 2002, in retaliation for his membership in or support of the Union, the Respondent has violated Section 8(a)(1) and (3) of the Act.

- 9. By granting wage increases to employees in an effort to dissuade them from voting for the Union, the Respondent has violated Section 8(a) (1) of the Act.
- 10. By withholding wage increases to certain employees in retaliation for the Union having filed an unfair labor practice, the Respondent has violated Section 8(a)(1) and (4) of the Act.
 - 11. By threatening employees with discharge, job loss and the reduction of hours and pay, in retaliation for their union membership and support, the Respondent has violated Section 8(a) (1) of the Act.
 - 12. By ordering an employee to remove t-shirts with union logos on them from a vehicle driven by that individual, the Respondent has interfered with employee rights and violated Section 8(a) (1) of the Act.
 - 13. Except as herein found, the Respondent has not violated the Act in any other manner encompassed by the Complaint.

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- 14. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.
 - 15. The Union's Objections to the election are sustained to the extent that they allege Respondent's conduct occurring between the filing of the petition, (July 23, 2002), and the holding of the election (August 22, 2002), which I have concluded were unfair labor practices.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

However, with respect to Maldonado, the evidence shows that he could not legally drive a vehicle for hire from July 22 to August 13, 2002. Therefore, he is not entitled to backpay for that period of time.

With respect to Paul Lockhard who was suspended, the Respondent must make him whole, with interest, for his loss of earnings.

With respect to any employees for whom wage increases that normally would have been given, were withheld, the Respondent must make them whole, with interest, for their loss of earnings.

With respect to the wage increases granted in August 2002, I shall not recommend that the Respondent be ordered to rescind these unlawfully granted increases as this would compound the effects of the unfair labor practices.

While recommending that the Board grant a bargaining order and set aside the election, I also recommend that the Board rule on the challenged ballots. In this regard, I recommend that the ballots of LaPointe, Delisle and Maldonado be opened and counted. I also recommend that the ballots of Luis Flores and Valerie Fazzina remain closed and uncounted. Based on the stipulations of the parties, I recommend that the ballot of Denise Little be opened and counted and that the ballot of Anthony Fazzina remain closed and uncounted. If a revised tally of ballots shows that the Union has won the August 22 election, then I recommend that a Certification of Representation be issued in addition to the bargaining order. *Dauman Pallet, Inc.*, 314 NLRB 185, 187 (1994).

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On these findings of fact and conclusions of law and on the entire record, I issue the following conclusions and recommended ¹¹

ORDER

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The Respondent, Ambassador Wheelchair Services Inc., its officers, agents and assigns, shall

1. Cease and desist from

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(a) Discharging employees because of their membership in or activities on behalf of International Union, United Automobile, Aerospace & Agricultural, Implement Workers of America, Local 376, or any other labor organization.

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- (b) Suspending employees because of their union membership and/or activities.
- (c) Discharging employees because the Union or anyone else files an unfair labor practice charge.

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- (d) Granting wage increases in order to induce employees to abandon their support for the Union or to vote against the Union in an election.
- (e) Withholding wage increases in retaliation for the filing of an unfair labor practice charge.

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- (f) Threatening employees with discharge, job loss or the reduction of hours and pay, in retaliation for their union membership or support.
 - (g) Ordering employees to remove union t-shirts from vehicles.

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- (h) In any like or related manner interfering with, restraining or coercing employees in the rights guaranteed to them by Section 7 of the Act.
 - 2. Take the following affirmative action necessary to effectuate the policies of the Act.

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time drivers, dispatchers, mechanics and maintenance employees employed by the Respondent at its Rocky Hill, Connecticut facility; but excluding all office employees, clerical employees, and guards, professional employees and supervisors as defined in the Act.

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- (b) Offer Daniel LaPointe, Diane Delisle, Wilfredo Maldonado and Marilyn Garcia who have been found to have been illegally discharged, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.
- (c) Make whole, with interest, Paul Lockhard for the loss of earnings he suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.
- (d) Remove from its files any reference to the unlawful discharges or suspensions or any other adverse actions which I have concluded to be unlawful herein and notify the employees in writing that this has been done and that these actions will not be used against them in any way. ¹²
- (e) Make whole, with interest, any employees who normally were scheduled to get wage increases who had them withheld because of the filing of unfair labor practice charges.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post at its facility in Rocky Hill, Connecticut, copies of the attached notice marked "Appendix." ¹³ Copies of the notice, in English and Spanish, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps

¹² In connection with the conclusion that the Respondent illegally ordered Garcia to remove union labeled t-shirts from the vehicle that she was driving, the evidence shows that David Jones filled out an incident report regarding this matter. On its face, this report did not appear to be a warning. But to be prudent, this should be removed from her file.

¹³ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

5	shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since July 12, 2002.				
	(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.				
10	IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.				
15	IT IS FURTHER ORDERED that the Union's objections to the election be sustained as described above and that the election held on August 22, 2002, in Case No. 34-RC-1970, be seaside.				
20	IT IS FURTHER ORDERED that a revised tally of ballots be issued in accordance with my rulings on the challenges and if the Union obtains a majority of the valid votes counted, that a Certification of Representative be issued.				
20	Dated, Washington, D.C.				
25	Raymond P. Green Administrative Law Judge				
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APPENDIX NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

10 FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities

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WE WILL NOT refuse to bargain collectively with International Union, United Automobile, Aerospace & Agricultural, Implement Workers of America, Local 376.

WE WILL NOT discharge, suspend or otherwise discipline our employees because of their activities or support for the Union or in retaliation for the filing of unfair labor practice charges.

WE WILL NOT grant wage increases in order to induce employees to abandon their support for the Union or to vote against the Union in an election.

WE WILL NOT withhold wage increases in retaliation for the filing of unfair labor practice charges.

WE WILL NOT threaten employees with discharge, job loss or the reduction of hours and pay, in retaliation for their union membership or support.

WE WILL NOT order employees to remove union t-shirts from their vehicles.

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WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

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All full-time and regular part-time drivers, dispatchers, mechanics and maintenance employees employed by the Respondent at its Rocky Hill, Connecticut facility; but excluding all office employees, clerical employees, and guards, professional employees and supervisors as defined in the Act.

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WE WILL offer Daniel LaPointe, Diane Delisle, Wilfredo Maldonado and Marilyn Garcia who have been found to have been illegally discharged, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL make whole Paul Lockhard for the loss of earnings he suffered as a result of the discrimination against him.

WE WILL remove from our files any reference to the unlawful discharges or suspensions or any other adverse actions which have been concluded to be unlawful and notify the employees in writing that this has been done and that these actions will not be used against them in any way.

WE WILL make whole any employees who normally were scheduled to get wage increases that were had them withheld because of the filing of unfair labor practice charges.

		Ambassador Wheelchair Services Inc. (Employer)	
Dated	Ву		
		(Representative)	(Title)
National Labor Relat union representation find out more about confidentially to any	ions Act. It conducts and it investigates anyour rights under the	nd remedies unfair labor praction Act and how to file a charge or s Regional Office set forth belo	mine whether employees want ces by employers and unions. T election petition, you may speak
		06103-3599. 860-240-3522. H	
THIS I	S AN OFFICIAL NOT	ICE AND MUST NOT BE DEF	ACED BY ANYONE
POSTING AND N ANY QUESTION	MUST NOT BE ALTER S CONCERNING TH		ED BY ANY OTHER MATERIAL. WITH ITS PROVISIONS MAY
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